REMARKS

Claims 1-3, 5-26 and 28-58 are pending in this application. Claims 1, 24 and 57 are independent claims. Claims 1-3, 5-25, 28-40, 44, 47, 48, 51, 53, 54 and 57 are amended. Claim 58 has been added. Reconsideration and allowance of the present application are respectfully requested.

Claim Rejections under 35 U.S.C. §112

Claims 1-3, 5-24, 29, 33, 39, 47-48, 51-54 and 57 stand rejected under 35 USC § 112, for lacking sufficient antecedent basis for the limitation in the claim. Each of claims has been amended to overcome the rejection. Therefore, Applicants respectfully request that the rejections of claims 1-3, 5-24, 29, 33, 39, 47-48, 51-54 and 57 under 35 U.S.C. §112 be withdrawn.

Claim Rejections Under 35 U.S.C. § 103

Claims 1, 2, 5, 14, 15, 18, 21, 24, 28, 36-38, 41, 44-50 and 54-57 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,170,060 to Mott et al. (hereinafter "Mott") in view of U.S. Patent No. 6,970,834 to Martin et al. (hereinafter "Martin"). This rejection is respectfully traversed.

Mott discloses a computer network architecture including a library site coupled to a client site and a mobile playback device via a conventional distribution network infrastructure. The mobile playback device is a minimally configured, low-cost, standalone mobile unit for receiving and storing digital information files or programs as downloaded by library server and client computer system and for playing back the digital information files or programs for a user of the mobile playback device. The mobile playback device includes a processor, memory, and an interface to the client computer system over which compressed digital information files are received. The user controls the mobile playback device using buttons and knobs provided on the device. These controls are used to navigate through digital information files, adjust configuration data and playback parameters, or perform other functions as directed by firmware stored in playback device. When coupled to the player, the client computer system or other electronic

devices can solicit user input from these controls. In an alternative embodiment, a set of additional user controls is provided on a remote control unit that is coupled to the player via a wired or wireless connection. The mobile playback device contains a limited quantity of non-volatile memory, RAM, and ROM. Digital information content, configuration data, and operating code are stored in the memory space of the mobile playback device. Configuration data includes but is not limited to: public and private IDs, content playback parameters, and user interface parameters. See at least Col. 5, lines 3-20 and Col. 9, line 57-Col. 10, line 58.

Applicant submits that Mott does not teach or suggest each of the elements recited in claims 1, 2, 14, 15, 18, 21, 24, 36-38, 41 and 44-52. Independent claims 1 and 57, in part, recites that the at least one playback control device includes "a continuous play program, and a controller to control the outputs of said digital media files to said output device according to said continuous play program." Independent claim 1 also recites "wherein said computer is provided with one or more executable files from said web server to allow said playback manager to select one or more media files for audition without affecting said continuous play program."

Independent claim 24, in part, recites "accessing and arranging at least one of digital media files and predetermined collections of said digital media files to create or modify a continuous play program for said playback control device via said web site" and "permitting a user to access one or more digital media files using said user interface to audition the one or more digital media files without affecting the continuous play program." Mott does not teach or suggest these features.

As presented in the Response to the previous Office Action, there is no teaching or suggestion in Mott of a continuous play program, as recited in the pending claims. Mott discloses that the mobile playback device is a minimally configured, low-cost, standalone mobile unit for receiving and storing digital information files or programs as downloaded by library server and client computer system and for playing back the digital information files or programs for a user of the mobile playback device. See at least Col. 5, lines 15-20. Col. 9, line 58-Col. 10, line 59 of Mott describes the mobile playback device in more detail. However, Mott fails to teach or suggest a continuous play program, as recited in the pending claims.

Furthermore, as noted above, Mott discloses that the user controls the mobile playback device using buttons and knobs provided on the device. According to Mott, these controls are

used to navigate through digital information files, adjust configuration data and playback parameters, or perform other functions as directed by firmware stored in playback device. Mott further discloses that when coupled to the player, the client computer system or other electronic devices can solicit user input from these controls. This disclosure of Mott clearly teaches away from having at least one playback control device which includes "a continuous play program, and a controller to control the outputs of said digital media files to said output device according to said continuous play program," as recited in claims 1 and 57. Mott also fails to teach or suggest "accessing and arranging at least one of digital media files and predetermined collections of said digital media files to create or modify a continuous play program for said playback control device via said web site," as recited in claim 24.

In addition, Col. 5, lines 15-20 of Mott discloses that the mobile playback device is a standalone unit. Col. 5, lines 20-30 of Mott further discloses that the mobile playback device is temporarily removably coupled to the client computer while the download takes place. According to this section of Mott, once the downloading is completed, the mobile playback device may be detached from the client computer and used as a standalone digital information playback device. Thus, there is no way the mobile playback device of Mott can be used during auditioning of one or more selected media files, without affecting the continuous play program. Therefore, Mott also does not teach or suggest "wherein said computer is provided with one or more executable files from said web server to allow said playback manager to select one or more media files for audition without affecting said continuous play program," and recited in claim 1 and "permitting a user to access one or more digital media files using said user interface to audition the one or more digital media files without affecting the continuous play program," as recited in claim 24.

Martin does not cure any of the deficiencies of Mott as outlined above. Specifically, the combination of Mott and Martin fails to teach or suggest that the at least one playback control device includes "a continuous play program, and a controller to control the outputs of said digital media files to said output device according to said continuous play program," as recited in claims 1 and 57 and "wherein said computer is provided with one or more executable files from said web server to allow said playback manager to select one or more media files for audition without affecting said continuous play program," as recited in claim 1. The combination of Mott and

Martin also fails to teach or suggest "accessing and arranging at least one of digital media files and predetermined collections of said digital media files to create or modify a continuous play program for said playback control device via said web site" and "permitting a user to access one or more digital media files using said user interface to audition the one or more digital media files without affecting the continuous play program," as recited in claim 24. Each of claims 2, 5, 14, 15, 18, 21, 28, 36-38, 41, 44-50 and 54-56 depends from claims 1 and 24, directly or indirectly, and therefore incorporates all of the elements of claims 1 and 24 in addition to the further elements recited in claims 2, 5, 14, 15, 18, 21, 28, 36-38, 41, 44-50 and 54-56. They are thus patentable over the cited art for at least the reasons stated herein. Therefore, Applicants respectfully request that this rejection of claims 1, 2, 5, 14, 15, 18, 21, 24, 28, 36-38, 41, 44-50 and 54-57 under 35 U.S.C. §103 be withdrawn.

Claims 6-13, 16, 17, 19, 20, 22, 23, 27-35, 39, 40, 42, 43 and 46 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Mott in view of Martin, and in further view of U.S. Patent No. 5,726,909 to Krikorian (hereinafter "Krikorian"). This rejection is respectfully traversed.

Krikorian does not cure the deficiencies of Mott and Martin, as outlined above. In particular, Krikorian does not teach or suggest that the at least one playback control device includes "a continuous play program, and a controller that outputs said digital media files to said output device according to said continuous play program," as recited in claims 1 and 57 and "wherein said computer is provided with one or more executable files from said web server to allow said playback manager to select one or more media files for audition without affecting said continuous play program," as recited in claim 1. The combination of Mott, Martin and Krikorian also fails to teach or suggest "accessing and arranging at least one of digital media files and predetermined collections of said digital media files to create or modify a continuous play program for said playback control device via said web site" and "permitting a user to access one or more digital media files using said user interface to audition the one or more digital media files without affecting the continuous play program," as recited in claim 24.

Krikorian merely discloses that the end user computer includes continuous program play customizing means. Therefore, Applicants respectfully request that this rejection of claims 6-13, 16, 17, 19, 20, 22, 23, 27-35, 39, 40, 42, 43 and 46 under 35 U.S.C. §103 be withdrawn.

Disclaimer

Applicants may not have presented all possible arguments or have refuted the characterizations of either the claims or the prior art as found in the Office Action. However, the lack of such arguments or refutations is not intended to act as a waiver of such arguments or as concurrence with such characterizations.

CONCLUSION

In view of the above, consideration and allowance are respectfully solicited.

In the event the Examiner believes an interview might serve in any way to advance the prosecution of this application, the undersigned is available at the telephone number noted below.

The Office is authorized to charge any necessary fees to Deposit Account No. 22-0185.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 27592-01055-US2 from which the undersigned is authorized to draw.

Dated: February 6, 2009

Respectfully submitted,

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